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 a valley on the face of the generally wedge shaped foundation generally in the area where the upper portion and lower portion meet resulting in the upper portion of the face being on average oriented at a higher angle relative to the horizontal plane than the lower portion on average, wherein said valley provides a means for cradling an occupant's thoracic curve]; and

(b) a top cushion having an upper and lower portion secured to the face of said generally wedge shaped foundation.

#### REMARKS -- SPECIFICATION

The specification has been amended to define the "average pitch" as the "average general pitch" to better clarify how the average pitch is determined. It is not intended that the average pitch should take into account major variations from the preponderate pitch, especially of the kind which may be near the highest portion of the upper portion or the lowest portion of the lower portion. When corrected drawings are submitted, FIG. 1C will have the average pitch of the upper portion and lower portion in a way that may be less likely to be open to different interpretations.

#### REMARKS -- GENERAL

NOTE: To make it simpler to follow, the amended claims are shown above using bracket and underline method, but since the amendment to claim 21 was fairly complex, applicant has attached all of the claims, including the amendments, but without the underlining or bracketing. This is done so that the examiner can quickly see the changes that have been made, but yet read the amended claims easily without the bracketing and underlining. Also, the amendments to claims that were included in Amendment A, are still bracketed and underlined in the above claims.

1. Claim 21 was rejected for indefiniteness, for failure to better define "being on average

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oriented at a higher angle..." This claim has been rewritten using wording similar to that used on claim 11 defining the angle relative to the horizontal plane.

2. Claims 11, 13, 14, 16-18 and 21 were rejected as being unpatentable over either Harris or Kohn in view of Eidam. Claims 11 and 21 have been revised including a definition of the lumbar support as "having a firmness sufficient to generally maintain its convex shape when pressure from a reclining occupant leaning against the foundation is applied". As explained below, it is believed that this should overcome the 35 U.S.C. 103(a) objection.

**Harris does not provide firm lumbar support.**

In column 1, line 7 Harris states that his back rest "...is designed to adjust to the physical contour of the user ..." In column 1 beginning at line 12, Harris states, "The pressure of the back and shoulders on these sections forces other sections of the cushion to adjust to the contour of the back and shoulders. This forces additional air into the head support section to hold the head in a more comfortable viewing position." Similar references are found in column 1 beginning in line 41, column 1 beginning in line 60, and column 2 beginning at line 8. The present invention does not seek to adjust to the physical contours of the occupant, but to some extent to support the occupant in ways that promote comfort and good health. When a person reclines, gravity tends to flatten the lumbar curve. For this reason, it is valuable to have a relatively firm lumbar support to keep the lumbar curve in a relatively natural lordotic curve.

Though the applicant does not wish to be bound by this, it appears from the drawing of the Harris invention that the two convex curves (14 & 16) on the lower portion of the floor rest would not provide the kind of lumbar support that would be desirable if the chair were made out of a foam that did not work like the inflatable ribs. Having two similar sized convex curve on the lower portion of a chair is of questionable for providing lumbar support.

While foam may in some instances be interchangeable with an inflatable cushion, in the Harris invention this would not be appropriate. Harris states in the abstract beginning in line 4, " The cushion body is quilted transversely to form ribs and ribbed sections, the sections

thus being in communication with each other so that pressure due to the weight of a heavy portion of the body on one section urges forward, with the rib as a pivot point, the head and other sections which support lighter portions of the body, to hold the head in a virtually upright position." This feature of the Harris invention would not work with a foam cushion. It further appears to the present applicant that the convex curves on the Harris invention are more a feature of making the ribs, than an attempt to provide a lumbar support that would help maintain a relatively natural lordotic curve. Note that the bottom and back of the backrest have convex contours.

**KOHN BED CUSHION SUPPORT BODY DOES NOT HAVE A LUMBAR SUPPORT THAT IS GENERALLY UNIFORM IN CROSS SECTION OR THAT IS SHAPED LIKE A GENERALLY SEMI-ELLIPTICALLY SHAPED CYLINDER**

Claim 21 defines the lumbar support means as: "...a convex contour on the lower portion of said face for supporting an occupant's lumbar region in a relatively natural lordotic curve, said convex contour being generally uniform in cross sectional shape like a generally semi-elliptically shaped cylinder...". Claim 11 defines the lumbar support as: "... comprising a generally semi-elliptically shaped cylindrical firm lumbar support..." The forward protrusion 42 & 44 on Kohn would not be like a generally semi-elliptically shaped cylinder.

While the present inventor does not want to be bound by this, it is not entirely clear what the Kohn bed cushion support really is. On the one hand, on page 1 line 8, Kohn refers to the bed cushion being "... adopted to surround and support the upper torso..." It is also unclear to the present inventor what is meant by "the small of the back", on page 1 line 28. In the claims on page 5 and lines 18 and 21 there is a reference to "upper back supporting" and "lower back supporting".

On the other hand, it appears to the present inventor that the Kohn invention does not have a backrest similar to the present invention. The basis for this belief is:

1. On page 3, line 21 Kohn state: "The mounds 25, 26 support either side of a users

head when the base of his skull is positioned against the trough at 24 and the upper part of his back snugly resting in the depth of the joint 27..."

2. On page 3 line 32 Kohn states: "The lower part 14 provides a surface plane 32 for supporting the back and shoulders of a user's torso..."

3. On page 4 line 6 Kohn states: "The flanks 36 and 37 provide shoulder supporting surfaces to the body of a user."

4. The forwardly projecting part of the Kohn drawing 42 and 44 does not appear consistent with a lumbar support. It would put stress on the spine, as opposed to distributing the pressure to the meatier sides of an occupant's back, and it might not be very balanced.

While the applicant does not want to be bound by this, he believes that Kohn's invention is more comparable to only the upper portion of the present invention. Therefore it would not be obvious to make the forward projection 44 & 42 of Kohn like a generally semi-elliptically shaped cylinder, since it appears that the projection fits between the shoulder blades of the occupant.

Also, while the applicant does not wish to be bound by this he believes that Kohn is more comparable to the Radford therapeutic device which has a base that is 15 1/2" and a height of 11 1/4". This is somewhat comparable to the dimensions of the upper portion of the present invention.

#### **IT WOULD NOT BE OBVIOUS TO ADD THE SEAT CUSHION OF ARGENTO TO THE BED CUSHION SUPPORT BODY OF KOHN**

If the Kohn invention is in keeping with the applicant's belief as described above, it would not be obvious to add a seat cushion. There would be no reason to add a seat to a cushion that starts near the shoulders.

#### **THE LEGREST CUSHION OF MORRELL WOULD NOT BE AN OBVIOUS COMBINATION WITH HARRIS OR KOHN**

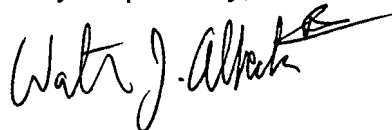
The knee support 20 shown in FIG. 5 of Morrell does not appear to provide support for the calves of the user. The legrest shown in FIG. 5 of the present invention is basically designed to support the calves, or portions from the knee down. In FIG.s 2E and 2F of the present invention, 34a is similarly for supporting the legs from the knees down. While the applicant does not wish to be bound by this, he believes that in contrast to the present invention, the knee support of Morrell primarily seems suited for supporting basically the thighs of the user. It does not seem reasonable to the applicant that the knee support 20 of Morrell has sufficient height and/or outward extension to make it practical for use as a legrest that supports the calves of the user.

#### REQUEST FOR CONSTRUCTIVE ASSISTANCE

The undersigned has made a diligent effort to amend the claims of this application to make them in conformance with the standards related to both indefiniteness as well as obviousness with regards to prior art cited. If for any reason the claims of this application are not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP 707.07(j) or in making constructive suggestions pursuant to MPEP 706.03(d) in order that this application can be placed in allowable condition as soon as possible.

Thank you.

Very respectfully,

A handwritten signature in black ink, appearing to read "Walter J. Albecker III", with a stylized flourish at the end.

Walter J. Albecker III

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### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as at least first class mail in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, D.C. 20231" on January 15, 1997.

Walter J. Albecker III 1/15/97  
Walter J. Albecker III Date